IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.3.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.PD No.546/2004

1.D.K.Sriramulu

2.Vanaja

3.D.S.Sathish

.. Petitioners

vs.

1.Tmt.P.Mallika

2.Ms.P.Ananthi

3.P.Kamalakannan

4.Minor P.Sundaresan
Minor 4th respondent
rep., by his next friend/
guardian-father Paranthaman

.. Respondents

Revision Petition filed under Article 227 of the Constitution of India against the order dated 27.1.2004 made in I.A.No.1076/2003 in O.S.No.255/2002 on the file of the District Munsif, Tiruvellore.

For Petitioners : M/s.M.Sathyanarayanan

For Respondents : Mr.Jagadev

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ORDER

This Revision Petition has been filed against the order dated 27.1.2004 made in I.A.No.1076/2003 in O.S.No.255/2002 on the file of the District Munsif court, Tiruvellore.

2.The defendants are the revision petitioners.

3.The plaintiffs filed O.S.No.255/2002 for a permanent injunction restraining defendants 1 to 3 from interfering with the plaintiff's

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peaceful possession and enjoyment of the suit schedule property bearing doorNo.30/1, J.N.Road, Tiruvallur until the dispute between defendants 1 to 3 and the plaintiff is resolved.

4.It is the case of the plaintiff that they were cheated by the defendants by not paying the balance sale consideration of Rs.5-1/2 lakhs even though the sale deed itself was executed and registered on 26.8.2002 for the suit schedule property. According to the plaintiffs, the sale consideration was arrived at Rs.11 lakhs, but it was shown as Rs.8.5 lakhs in the sale deed. Only a sum of Rs.2.5 lakhs was paid to the plaintiffs. But a sale deed was made by the defendants as if Rs.5 lakhs was paid by them for discharging the mortgage and a sum of Rs.92,000/- was adjusted for repaying the advance rental amount deposited by the tenants who are residing in the suit property. Without settling the balance amount of Rs.5-1/2 lakhs, the defendants attempted to take possession of the property by pressurising the tenants to attorn tenancy in their favour. Hence the plaintiffs filed the above suit.

5.Pending suit, the plaintiffs filed I.A.No.1076/2003 under Sec.94 CPC directing the defendants to deposit in court a sum of Rs.92,000/- being part of sale consideration payable to them.

6.The trial court directed the defendants to deposit into court a sum of Rs.92,000/- less the amount paid towards advance to tenants on condition to the plaintiffs to pay deficit advance in case of exceeding Rs.92,000/-.

7.Aggrieved by the order of the trial court, the defendants have filed the above Civil Revision Petition under Article 227 of the Constitution of India.

8.Heard the learned counsel for the petitioners and the learned counsel for the respondents. I have also perused the documents filed in support of their submissions.

9.I am of the considered view that the trial court has exceeded its jurisdiction in directing the defendants to deposit the amount of Rs.92,000/- less the amount already paid, considering the relief prayed by the plaintiffs in the suit.

10.The plaintiffs neither prayed for setting aside the sale deed dated 26.8.2002 nor prayed for recovery of the amount of Rs.92,000/- said to have been adjusted by the defendants for paying the advance amount to the tenants. Nor they claimed the relief of directing the defendants to pay the balance sale consideration of Rs.5-1/2 lakhs, said to be due and payable to them. The only relief they prayed for is for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. In such circumstances, the relief sought for in I.A.No.1076/2003 is beyond the scope of the suit

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prayer. Any prayer in the Interlocutory Application is to be in consonance with main reliefs sought for in the suit. I.A.No.1076/2003 is filed under Sec.94 of CPC, which enables the courts to make interlocutory orders as may appear to the courts to be just and convenient in order to prevent the ends of justice from being defeated. Even if the plaintiffs succeed in the suit, all they would get is only a permanent injunction as prayed for by them and by not depositing the said amount in the court pending disposal of the suit, it cannot be said that the ends of justice would be defeated. Hence I find no merits in the petition filed in I.A.No.1076/2003 and the trial court has definitely exceeded its authority by directing the defendants to deposit the amount in court, when there is no nexus between the main relief in the suit and the relief prayed in the said I.A.No.1076/2003.

11.Hence I am inclined to interfere with the order of the trial court dated 27.1.2004 and the same is set aside.

12.In the result, this Civil Revision Petition is allowed. No costs. C.M.P.No.5546/2004 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

To
The District Munsif, Tiruvallur.
+ 1 CC To Mr. M.Sathyanarayanan, Advocate SR NO.13552

C.R.P.PD.546/04.

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